

Message Text

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ACTION EA-14

INFO OCT-01 ISO-00 DODE-00 L-03 H-03 MMS-04 SP-03 PER-05

ABF-01 M-02 AID-20 USIA-15 DRC-01 RSC-01 /073 W

----- 041603

P R 171137Z SEP 74

FM AMEMBASSY PHNOM PENH

TO SECSTATE WASHDC PRIORITY 7750

INFO AMEMBASSY BANGKOK

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E.O. 11652: N/A

TAGS: AFSP, CB

SUBJECT: CONTRACT EMPLOYEES

REF: (A) STATE 201961 (B) PHNOM PENH 3679

(C) PHNOM PENH 6318 (D) STATE 085201

1. PROPOSED CHANGES TO SECTION 656 FAA IF ENACTED WOULD GRAVELY AFFECT THE U.S. GOVERNMENT'S ABILITY TO CARRY OUT ITS MISSION IN CAMBODIA AND PARTICULARLY IF INTERPRETED AS IMPLIED REFTEL (A) WOULD HAVE CRIPPLING CONSEQUENCES FOR PROGRAMS HERE. IT IS IMPORTANT TO NOTE THAT THE INTERPRETATION IMPLIED, I.E. A LOOSE DEFINITION OF CONTRACTUAL RELATIONSHIP, COVERS AREAS NEVER BEFORE CONSIDERED AS BEING APPLICABLE TO HEADSPACE FOR EITHER TCN'S OR AMERICANS. THUS, FOR EXAMPLE, WHILE THERE HAVE BEEN TO DATE NO AMERICANS INVOLVED IN MEKONG OR TONLE SAP CONVOYS (THOUGH WE CANNOT BE CERTAIN) THERE ARE UPWARDS OF 200 TCN'S WHO ARE REGULARLY EMPLOYED ON VESSELS CHARTERED TO USAID OR MEDTC. NEEDLESS TO SAY, THE MEKONG CONVOYS ARE ABSOLUTELY ESSENTIAL TO THE GKR'S SURVIVAL AND COULD NOT BE OPERATED EXCLUSIVELY BY KHMERS.

2. IN A SIMILAR FASHION, AIR OPERATIONS ORIGINATING OUTSIDE OF CAMBODIA AND RETURNING DAILY TO BASE IN SAIGON, BANGKOK AND IN THE FUTURE UTAPAO WOULD BE AFFECTED UNDER THOS LOOSE DEFINITION, AS AMERICANS AS WELL AS TCN'S ARE INVOLVED. THIS WOULD INCLUDE AIR
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AMERICA CHARTERED FREIGHT AND PASSENGER FLIGHTS FOR ALL ELEMENTS OF

THE MISSION, CONTINENTAL AIR SERVICES CONTRACT WITH USAID AND THE PROPOSED BIRD C-130 AIR/LAND AND DROP MISSIONS. ALTHOUGH THE NUMBER OF PLANES INVOLVED VARIES CONSIDERABLY FROM DAY TO DAY, WE ESTIMATE THAT AN AVERAGE OF 6 AMERICANS AND AN UNDETERMINED NUMBER OF TCN MAINTENANCE PERSONNEL ARE INVOLVED IN THIS OPERATION EACH DAY. THESE ARE THE PRIMARY EXAMPLES; HOWEVER, THERE ARE OTHER FIRMS EMPLOYING AMERICANS AND TCN'S WITH WHOM EMBASSY CONTRACTS FOR SUCH SERVICES AS CONSTRUCTION AND MAINTENANCE WHICH ARE A REGULAR PART OF OUR DAILY OPERATIONS.

3. OUR VIEW AS OUTLINED IN PHNOM PENH 3679 IS THAT CEILING SHOULD APPLY TO DIRECT-HIRE PERSONNEL AND TO PERSONNEL HIRED UNDER A PERSONAL SERVICES TYPE CONTRACT WHERE IT COULD BE CONSTRUED THAT AN EMPLOYER-EMPLOYEE RELATIONSHIP EXISTS, HOWSOEVER THEY ARE PAID, DIRECTLY OR INDIRECTLY, BUT CELING SHOULD NOT APPLY TO AMERICANS OR TCN'S EMPLOYED BY FIRMS WITH WHICH EMBASSY ENTERS INTO A NON-PERSONAL SERVICES CONTRACT ARRANGEMENT WHERE PERSONNEL ARE ONLY INCIDENTAL TO SERVICES PROVIDED AND WHERE USG IN EFFECT HAS NO INTEREST IN NOR RESPONSIBILITY FOR PERSONNEL INVOLVED.

4. EMBASSY BELIEVES THAT THERE IS AN URGENT REQUIREMENT FOR THE DEPARTMENT TO ENDEAVOR TO OBTAIN OR MAKE THE CLEAREST POSSIBLE INTERPRETATION AS TO JUST WHAT TYPE OF CONTRACTUAL RELATIONSHIP FALLS WITHIN THE SCOPE OF 656 FAA, EITHER THROUGH CONSULTATIONS WITH THE LEGISLATIVE COMMITTEE OR BY MEANS OF DEPARTMENTAL LEGAL OPINION. GIVEN THE IMPORTANCE OF THIS QUESTION TO BOTH USAID AND DOD PROGRAMS, REPRESENTATIVES OF THOSE AGENCIES SHOULD ALSO BE CONSULTED. THE DISTINCTION WHICH EMBASSY HAS TRIED TO DRAW BETWEEN PERSONAL AND NON-PERSONAL SERVICES TYPE CONTRACT IS FOR US AN EXTREMELY IMPORTANT ONE WITH REGARD TO BOTH AMERICAN AND TCN CONTRACTORS. WE NEED THE CLEAREST POSSIBLE INTERPRETATION OF 656 FAA THAT IS CONSISTENT WITH OUR OBJECTIVES.

5. TEN AMERICAN CONTRACT PERSONNEL ARE NOW BEING COUNTED REGULARLY UNDER HEADSPACE. THESE HAVE BEEN COUNTED SINCE THE BEGINNING BECAUSE DEPARTMENT CONSTRUED THEIR SERICES AS BEING OF A PERSONAL SERVICES TYPE. THEY ARE EMPLOYEES OF: AIR AMERICA (4), LYCOMING (1), BELL ENGINEERING AND TECHNICAL SERVICES (1), HELIO CORPORATION (1), FEC (2), AND IDA (1). WE KNOW OF NO OTHER AMERICAN LIMITED OFFICIAL USE

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CONTRACT PERSONNEL WHO SHOULD BE COUNTED UNDER EMBASSY'S INTERPRETATION OF LEGISLATION.

6. LIKE WISE 72 TCN PERSONNEL ARE BEING COUNTED BY EMBSSY BECAUSE IT COULD BE CONSTRUED THAT AN EMPLOYER/EMPLOYEE RELATIONSHIP EXISTS, AND 13 TCN PERSONNEL ARE UNDER DIRECT HIRE BY THE EMBASSY.

7. DEPARTMENT DOES NOT NEED OUR ADVICE ON HOW BEST TO MAKE THE

CASE WITH THE CONGRESS AGAINST THIS NEW RESTRICTION, BUT IN OUR VIEW THE MOST COMPELLING ARGUMENT WOULD BE THAT MORE THAN HALF OF OUR PERSONNEL DIRECTLY SUPERVISE THE PROGRAMS OF SECURITY, ECONOMIC AND HUMANITARIAN ASSISTANCE TO CAMBODIA AUTHORIZED AND FUNDED BY THE CONGRESS, AND PERHAPS ANOTHER QUARTER OF OUR PERSONNEL ARE INDIRECTLY CONCERNED WITH THE SAME FUNCTION OF ATTEMPTING TO SEE THAT THIS ASSISTANCE IS USED PROPERLY AND EFFECTIVELY. THE CONGRESS WOULD ONLY BE DEFEATING ITS OWN PURPOSES BY PREVENTING THE MISSION FROM CARRYING OUT ITS DUTIES IN THIS REGARD THROUGH RESTRICTING SO SEVERELY THE NUMBER OF PEOPLE ENGAGED IN THIS TASK. WE WONDER IF THERE IS ANOTHER COUNTRY IN THE WORLD BEING ASSISTED BY THE UNITED STATES (EVEN ONE WHERE PEACE RATHER THAN WAR PREVAILS) WHERE SO FEW PEOPLE ARE BEING ASKED TO LOOK AFTER SO MUCH OF THE U.S. TAXPAYERS' MONEY.

8. USAID AND MEDTC CONCUR IN THIS MESSAGE.
KEELEY

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Message Attributes

Automatic Decaptioning: X
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: n/a
Control Number: n/a
Copy: SINGLE
Draft Date: 17 SEP 1974
Decaption Date: 01 JAN 1960
Decaption Note:
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: cunninfx
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1974PHNOM12476
Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Film Number: D740260-0264
From: PHNOM PENH
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1974/newtext/t19740939/aaaabgqf.tel
Line Count: 132
Locator: TEXT ON-LINE, ON MICROFILM
Office: ACTION EA
Original Classification: LIMITED OFFICIAL USE
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators:
Previous Classification: LIMITED OFFICIAL USE
Previous Handling Restrictions: n/a
Reference: (A) STATE 201961 (B) PHNOM PENH 3679
Review Action: RELEASED, APPROVED
Review Authority: cunninfx
Review Comment: n/a
Review Content Flags:
Review Date: 24 JUL 2002
Review Event:
Review Exemptions: n/a
Review History: RELEASED <24 JUL 2002 by martinml>; APPROVED <06 MAR 2003 by cunninfx>
Review Markings:

Declassified/Released
US Department of State
EO Systematic Review
30 JUN 2005

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: CONTRACT EMPLOYEES
TAGS: AFSP, CB
To: STATE
Type: TE
Markings: Declassified/Released US Department of State EO Systematic Review 30 JUN 2005